IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT APPEAL NO.3 OF 2004

S.Y.Wagle & Ors. ..Appellants

V/s.

Smt. Sunanda R.Desai & Ors. ..Respondents

Mr.R.S.Apte with Mr.N.R.Bubana for appellants.

Mr.P.K.Dhakephalkar i/by Mr.A.A.Kocharekar for Respondent nos.1 to 5.

Coram : S.B.Mhase &
R.S.Mohite,JJ

Date : 1.11.2004.

PC

. Heard both sides.

1. This Contempt Appeal arises from an order of the single Judge appointing Receiver of the suit property in a Contempt Petition by way of interim arrangement. However, on 5.10.2004 the appellants have passed a Pursis tendering unconditional apology for not filing the undertaking as was directed to be given. A pursis further stated that the appellants will hand over the possession of the suit property to respondent nos.1 to 5 on or before 31.10.2004 and the said pursis is being passed without prejudice to the rights and contentions of the appellants, available to them, to be agitated before the

appropriate forum by an appropriate proceedings. Mr.Apte learned Advocate for the appellents have filed on record copies of the possession receipts, those are marked as ‘Y’ (colly), in token of the fact that as per the undertaking, the possession has been delivered to respondent nos.1 to 5. Learned Advocate for Respondent nos.1 to 5 states that respondent nos.1 to 5 have received the possession of the suit premises. He further makes a statement that as the possession has been received by respondent nos.1 to 5, he do not desire to prosecute the Contempt petition and he will move the single Judge for withdrawal of the said Contempt petition. Both the counsel have stated that in view of the delivery of the possession, the order appointing the Receiver will have to be quashed and set aside.

2. In view of the statement made above and the concessions given by the respective Counsel, we pass the following order :-

O R D E R

. The impugned order passed by the Single Judge appointing the Receiver in respect of the suit property in Contempt petition is hereby quashed and set aside. The respondents shall move the single Judge for withdrawal of the Contempt petition. As the appellants have delivered the possession,

reserving their rights to agitate the contentions available to them in appropriate proceedings, we only observe that they have such liberty.

. Contempt appeal is accordingly disposed of.

. Certified copy expedited.

(R.S.Mohite,J) **(S.B.Mhase,J)**